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<p>1 UNITED STATES DISTRICT COURT</p> <p>2 SOUTHERN DISTRICT OF NEW YORK</p> <p>3</p> <p>4 FEDERAL TRADE COMMISSION and)</p> <p>5 THE PEOPLE OF THE STATE OF)</p> <p>6 NEW YORK, by LETITIA JAMES,) Matter No.</p> <p>7 Attorney General of the State) 1:17-cv-00124-LLS</p> <p>8 of New York,) CONFIDENTIAL</p> <p>9 Plaintiffs,) ATTORNEYS' EYES</p> <p>10 v.) ONLY</p> <p>11 QUINCY BIOSCIENCE HOLDING)</p> <p>12 COMPANY, et al.,)</p> <p>13 Defendants.)</p> <p>14 -----)</p> <p>15</p> <p>16 Thursday, August 20, 2020</p> <p>17 Via Zoom</p> <p>18</p> <p>19 The above-entitled matter came on for the</p> <p>20 30(b)(6) deposition of MARK YANCEY UNDERWOOD, pursuant</p> <p>21 to notice, at 9:43 a.m., Central time; 10:43 a.m.,</p> <p>22 Eastern time.</p> <p>23</p> <p>24</p> <p>25</p>	<p>3</p> <p>1 ON BEHALF OF CORPORATE DEFENDANTS:</p> <p>2 GEOFFREY W. CASTELLO, ESQ.</p> <p>3 JACLYN M. METZINGER, ESQ.</p> <p>4 GLENN T. GRAHAM, ESQ.</p> <p>5 Kelley Drye & Warren</p> <p>6 One Jefferson Road</p> <p>7 Second Floor</p> <p>8 Parsippany, New Jersey 07054</p> <p>9 (973) 503-5922</p> <p>10 gcastello@kelleydrye.com</p> <p>11</p> <p>12</p> <p>13 ON BEHALF OF THE DEFENDANT UNDERWOOD:</p> <p>14 MICHAEL B. DeLEEuw, ESQ.</p> <p>15 TAMAR WISE, ESQ.</p> <p>16 Cozen O'Connor</p> <p>17 45 Broadway</p> <p>18 16th Floor</p> <p>19 New York, New York 10006</p> <p>20 (212) 908-1331</p> <p>21 mdeleeuw@cozen.com</p> <p>22</p> <p>23</p> <p>24 ALSO PRESENT:</p> <p>25 William Ducklow, FTC</p>																																																		
<p>2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 ON BEHALF OF THE FEDERAL TRADE COMMISSION:</p> <p>4 ANNETTE SOBERATS, ESQ.</p> <p>5 MICHELLE RUSK, ESQ.</p> <p>6 EDWARD GLENNON, ESQ.</p> <p>7 Federal Trade Commission</p> <p>8 600 Pennsylvania Avenue, N.W.</p> <p>9 Washington, DC 20850</p> <p>10 (202) 326-2921</p> <p>11 asoberats@ftc.gov</p> <p>12</p> <p>13</p> <p>14 ON BEHALF OF THE STATE OF NEW YORK:</p> <p>15 KATE MATUSCHAK, ESQ.</p> <p>16 Assistant Attorney General for the</p> <p>17 State of New York</p> <p>18 Consumer Frauds and Protection Bureau</p> <p>19 120 Broadway</p> <p>20 New York, New York 10271</p> <p>21 (212) 416-6189</p> <p>22 kate.matuschak@ag.ny.gov</p> <p>23</p> <p>24</p> <p>25</p>	<p>4</p> <p>1 FEDERAL TRADE COMMISSION</p> <p>2 I N D E X</p> <p>3</p> <table border="0"> <tr> <td>4 WITNESS:</td> <td>EXAMINATION:</td> </tr> <tr> <td>5 MARK YANCEY UNDERWOOD</td> <td></td> </tr> <tr> <td>6 BY MS. SOBERATS:</td> <td>9</td> </tr> <tr> <td>7</td> <td></td> </tr> <tr> <td>8</td> <td></td> </tr> <tr> <td>9 EXHIBITS</td> <td>DESCRIPTION FOR ID</td> </tr> <tr> <td>10 Number MU-1</td> <td>Underwood 30(b)(6) Notice of Deposition 13</td> </tr> <tr> <td>11</td> <td></td> </tr> <tr> <td>12 Number MU-2</td> <td>11/13/13 Miller Email Re: 17</td> </tr> <tr> <td>13</td> <td>Verbatims #3</td> </tr> <tr> <td>14 Number MU-3</td> <td>Complaint Exhibits 24</td> </tr> <tr> <td>15 Number MU-4</td> <td>Goodman Draft Report 28</td> </tr> <tr> <td>16 Number MU-5</td> <td>Talati/FDA Letter 43</td> </tr> <tr> <td>17 Number MU-6</td> <td>Custom Biologics Animal ID 46</td> </tr> <tr> <td>18 Number MU-7</td> <td>Custom Biologics Report 50</td> </tr> <tr> <td>19 Number MU-8</td> <td>September 2012 Helina Communication 56</td> </tr> <tr> <td>20</td> <td></td> </tr> <tr> <td>21 Number MU-9</td> <td>Helina Abstract 61</td> </tr> <tr> <td>22</td> <td></td> </tr> <tr> <td>23 Number MU-10</td> <td>Pencharz Letter 72</td> </tr> <tr> <td>24</td> <td></td> </tr> <tr> <td>25 Number MU-11</td> <td>2/17/16 Talati/FDA Letter 76</td> </tr> <tr> <td></td> <td></td> </tr> <tr> <td>Number MU-12</td> <td>12/22/12 Underwood/Beaman Summary Email 79</td> </tr> <tr> <td>Number MU-13</td> <td>Collins v. Quincy Bioscience Settlement 92</td> </tr> </table>	4 WITNESS:	EXAMINATION:	5 MARK YANCEY UNDERWOOD		6 BY MS. SOBERATS:	9	7		8		9 EXHIBITS	DESCRIPTION FOR ID	10 Number MU-1	Underwood 30(b)(6) Notice of Deposition 13	11		12 Number MU-2	11/13/13 Miller Email Re: 17	13	Verbatims #3	14 Number MU-3	Complaint Exhibits 24	15 Number MU-4	Goodman Draft Report 28	16 Number MU-5	Talati/FDA Letter 43	17 Number MU-6	Custom Biologics Animal ID 46	18 Number MU-7	Custom Biologics Report 50	19 Number MU-8	September 2012 Helina Communication 56	20		21 Number MU-9	Helina Abstract 61	22		23 Number MU-10	Pencharz Letter 72	24		25 Number MU-11	2/17/16 Talati/FDA Letter 76			Number MU-12	12/22/12 Underwood/Beaman Summary Email 79	Number MU-13	Collins v. Quincy Bioscience Settlement 92
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<p style="text-align: right;">5</p> <p>1 EXHIBITS DESCRIPTION FOR ID</p> <p>2 Number MU-14 1/9/17 FTC v. Quincy 95</p> <p>3 Bioscience Complaint</p> <p>4 Number MU-15 7/31/19 CFO Financial 103</p> <p>5 Presentation</p> <p>6 Number MU-16 Underwood/Lerner/Syvruud 108</p> <p>7 2017 Email</p> <p>8 Number MU-17 Defendants' Third 112</p> <p>9 Supplemental Responses and</p> <p>10 Objections to Plaintiffs'</p> <p>11 First Set of</p> <p>12 Interrogatories</p> <p>13 Number MU-18 Defendants' Supplemental 114</p> <p>14 Responses and Objections to</p> <p>15 Plaintiffs' Second Set of</p> <p>16 Interrogatories</p> <p>17 Number MU-19 3-GMR Complete Graphic 119</p> <p>18 Number MU-20 Alzheimer's Association 127</p> <p>19 International Conference</p> <p>20 Poster</p> <p>21 Number MU-21 A Novel Mechanism for 128</p> <p>22 Cognitive Enhancement in</p> <p>23 Aged Dogs With the Use of a</p> <p>24 Calcium-Buffering Protein</p> <p>25 Number MU-22 Merrick/Milgram 130</p> <p>Correspondence</p> <p>Number MU-23 Madison Memory Study 141</p> <p>Number MU-24 6/23/14 Beaman/Miller Email 152</p> <p>Exchange</p> <p>Number MU-25 Prevagen Extra Strength 156</p> <p>Packaging</p>	<p style="text-align: right;">7</p> <p>1 today my colleagues Jaclyn Metzinger and Glenn Graham.</p> <p>2 And also Michael deLeeuw and Tamar Wise with Cozen</p> <p>3 O'Connor who are appearing on behalf of Mr. Underwood.</p> <p>4 VIDEO TECHNICIAN: Will the court reporter</p> <p>5 please swear in the witness.</p> <p>6 Whereupon--</p> <p>7 MARK YANCEY UNDERWOOD</p> <p>8 a witness, called for examination, having been first</p> <p>9 duly sworn, was examined and testified as follows:</p> <p>10 MS. SOBERATS: And, Mr. Underwood, before we get</p> <p>11 started, the attorneys are going to handle a couple of</p> <p>12 preliminary issues. So Plaintiffs were notified a few</p> <p>13 minutes before we were set to begin today's deposition</p> <p>14 that Defendants were taking the position that Plaintiffs</p> <p>15 were entitled to a little over 30 minutes for today's</p> <p>16 30(b)(6) deposition of Mr. Underwood. We informed</p> <p>17 Defendants that that was not our view. We believe that</p> <p>18 under Rule 30(d)(1) we are entitled to a full seven</p> <p>19 hours for today's deposition. We believe that the 2000</p> <p>20 Advisory Committee Note to Rule 30 makes it very clear</p> <p>21 that the duration of today's 30(b)(6) deposition of Mr.</p> <p>22 Underwood is seven hours.</p> <p>23 However, in the interest of time, the parties</p> <p>24 met and conferred prior to beginning today's deposition</p> <p>25 and we've reached an agreement. So for today's 30(b)(6)</p>
<p style="text-align: right;">6</p> <p>1 PROCEEDINGS</p> <p>2 - - - - -</p> <p>3 VIDEO TECHNICIAN: Here begins disk 1 in the</p> <p>4 video deposition of Mark Underwood, taken in the matter</p> <p>5 of Federal Trade Commission, et al. v. Quincy Bioscience</p> <p>6 Holding Company, Inc., et al. in the United States</p> <p>7 District Court, Southern District of New York, Case</p> <p>8 Number 1:17-cv-00124-LLS.</p> <p>9 Today's date is August 20th, 2020, and the time</p> <p>10 on the video monitor is 9:43 a.m., Central Daylight</p> <p>11 time. This deposition is being held remotely via</p> <p>12 videoconference. The court reporter is Sally Quade, on</p> <p>13 behalf of For The Record. The video camera operator is</p> <p>14 Isaac Hoerner on behalf of For The Record.</p> <p>15 Will counsel please introduce themselves and</p> <p>16 state whom they represent, beginning with the party</p> <p>17 noticing the deposition.</p> <p>18 MS. SOBERATS: Appearing for the Federal Trade</p> <p>19 Commission are attorneys Annette Soberats, Michelle Rusk</p> <p>20 and Edward Glennon, as well as investigator Will</p> <p>21 Ducklow.</p> <p>22 MS. MATUSCHAK: This is Kate Matuschak here for</p> <p>23 the New York State Office of the Attorney General.</p> <p>24 MR. CASTELLO: Good morning. This is Geoffrey</p> <p>25 Castello, Kelley, Drye & Warren, LLP. I have with me</p>	<p style="text-align: right;">8</p> <p>1 deposition of Mr. Underwood, Plaintiffs will be given</p> <p>2 five hours of deposition time and we will proceed</p> <p>3 tomorrow with Mr. Underwood's deposition in his</p> <p>4 individual capacity and Plaintiffs will have a full</p> <p>5 seven hours for that deposition.</p> <p>6 Geoff, is there anything you would like to add?</p> <p>7 MR. CASTELLO: Yes, this is Castello on behalf</p> <p>8 of the corporate defendants. Corporate defendants</p> <p>9 disagree with counsel's preamble argument. We disagree</p> <p>10 with the position that Plaintiffs have taken; however,</p> <p>11 we do agree that we have allowed for five hours of</p> <p>12 deposition testimony today, seven hours tomorrow in Mr.</p> <p>13 Underwood's individual capacity. We are, however, going</p> <p>14 to review the topic list after the deposition is closed</p> <p>15 today, the 30(b)(6) topic list, and try to come to a</p> <p>16 determination of areas of testimony that Mr. Underwood</p> <p>17 gives today and advise Plaintiffs that Mr. Underwood</p> <p>18 would adopt that testimony on questions relating to same</p> <p>19 subject matter in his individual capacity.</p> <p>20 Mr. DeLeeuw, have I missed anything?</p> <p>21 MR. DELEEUEW: No, that's exactly right.</p> <p>22 MR. CASTELLO: And then, Annette, one other</p> <p>23 issue. We are going to designate this transcript as</p> <p>24 attorneys' eyes only, and we will revert to the</p> <p>25 procedure in the protective order with respect to final</p>

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biology. So -- it also states that -- it does say more than 90 percent of the protein was digested, therefore not all of it was digested. So by that math, there's still protein left. So there's likely protein left. There's likely peptides left. Because it wasn't a complete digestion in this artificial environment in the first place.

Q. And you talked earlier -- you testified earlier about how this was intended to be a simulation. Was this intended to be a simulation of the stomach or the entire GI tract?

A. Well, neither. This is intended to simulate a protein that's being broken down by pepsin. So that you can compare it to other proteins that have also been broken down by pepsin and you can compare their -- excuse the -- the breakdownability, the digestibility of the proteins to assess them and compare them against other known proteins and their digestibility to see if they're likely to be an allergenic.

Q. Your -- Quincy's expert, Dr. Richard Goodman, stated in his expert report in the Racies case that the assays used in this report were not designed to confirm the presence of small peptides. Would you agree with that statement?

MR. CASTELLO: Objection.

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THE WITNESS: He's the expert in the field. I have no reason to contradict our expert.

BY MS. SOBERATS:

Q. Did Quincy perform any analytical work to determine whether there were, in fact, any peptides resulting from -- from the degradation of the protein?

MR. CASTELLO: Objection.

THE WITNESS: I don't -- I'm sorry. I don't believe so because the goal of this study was just to assess allergenicity, not to assess what was left over. It was -- is it likely to be safe or is it not? I mean, that was the -- the reason for the study.

BY MS. SOBERATS:

Q. Understood, but subsequent to this study, let's put this study aside for a moment. Has Quincy performed any analytical work to determine whether there are, in fact, any peptides that result from the digestion of the apoaeguorin protein?

A. No, we have not.

Q. Does Quincy have any research showing that any fragments from apoaeguorin survive digestion in the human GI tract?

A. We've never performed that study.

Q. And I'll ask this question also, does Quincy have any research showing that if any fragments do

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survive digestion that they enter the bloodstream?

A. In the canine study, we do show that. So I guess -- I'm sorry, I guess the answer would be we have detected the full protein, but we didn't look for peptides. So I'm sorry, maybe that doesn't answer your question.

Q. When you say that you detected the full protein in the canine study, can you elaborate on what you mean by that?

A. There was detectable levels, all be them low, in the cerebrospinal fluid and in the blood plasma of the canines that were tested with the oral administration of apoaeguorin. In those cases, the full protein was detected. So -- so we have conducted tests related to what you're asking, but it wasn't specifically looking for other peptides, it was looking for the full -- the full protein.

Q. And again, the canine study that you're referring to is the data that's reported on by Custom Biologics?

A. Yeah, Custom Biologics performed that work, yes.

Q. Just to be clear.

A. Yes, thank you.

(Deposition Exhibit Number MU-5, Talati/FDA Letter, was marked for identification.)

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BY MS. SOBERATS:

Q. Mr. Underwood, I have just marked and revealed a new exhibit. This is MU-5, and it is Bates labeled Quincy-FTC-547151. Do you recognize this document?

A. I do.

Q. And what is it?

A. This is a letter produced by our regulatory attorneys that was addressed to the Minneapolis office of the FDA.

Q. Okay. And Amin Talati I believe you just stated is the law firm that represents Quincy Bioscience Manufacturing, Inc.?

A. One of them, yes.

Q. Okay. Let's go to the top of page 2, the very first paragraph. In this letter, Amin Talati states that apoaeguorin meets the definition of a dietary ingredient because, among other things, it is quickly digested by the stomach into safe, naturally-occurring alpha amino acids and apoaeguorin is principally a source of amino acids. Do you see where it says this?

A. I do.

MR. CASTELLO: Ms. Soberats, before you go on, I just want to confirm which topic we're on right now.

MS. SOBERATS: We're on the same topic, topic H. And also, Geoff, I'll point out that this -- this also

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1 **Q. Okay. So who is the graphic designer who**
2 **created this chart?**

3 A. Well, I don't know, because I don't know when
4 you took the screenshot. Like I mentioned before, this
5 is a web screenshot that's been cut and pasted into a
6 complaint -- or I think that's the right term. I have
7 no idea of its origin. I don't know if it was taken
8 from a commercial on a website, if it was a static image
9 on a website, and I just -- I have no data reference for
10 it. To answer your question means I don't know what
11 designer was employed by us that would have created the
12 chart. Or if it was created by an outside group.

13 **Q. Okay. But you did testify earlier that charts**
14 **that were an approximation of this chart on page 25 of**
15 **MU-14 were used in marketing for Prevagen.**

16 A. I testified that charts that are similar to
17 this. The only reason I even qualify that is because I
18 can't tell you exactly where this chart came from.

19 **Q. Understood.**

20 A. I don't mean to be argumentative, but a
21 three-bar chart is certainly used in many forms of
22 advertising. I'm not -- I'm not debating that one bit,
23 but in terms of the specificity of this chart versus
24 something used in a TV spot, I just can't tell what --
25 where this is from.

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1 **Q. Who created the bar charts that were similar to**
2 **the one depicted here for Exhibit MU-14 on page 25?**

3 MR. CASTELLO: Objection.

4 THE WITNESS: Those have been -- I'm sorry,
5 Geoff, were you objecting?

6 MR. CASTELLO: Yeah, but you can answer.

7 THE WITNESS: At different times in the company,
8 we've employed different graphic designers. We've also,
9 for different advertising projects, worked with
10 combinations of inside and outside groups, whether
11 that's designers, graphic artists or even agencies. So
12 I don't have any way of knowing who created this chart.

13 BY MS. SOBERATS:

14 **Q. Can you provide me with the names of your**
15 **graphic designers?**

16 A. Sure. Currently our lead graphic designer's
17 name is Casey Syvrud.

18 **Q. And when did she assume that position?**

19 A. I don't know exactly. I would -- I would say
20 about three years ago, though, I think. Maybe four.
21 And so if this was put in your complaint, this would
22 predate here. So I -- sort of -- I don't know if it's
23 my role to do the forensics of this, but prior to that,
24 our graphic designer was a gentleman by the name of Mike
25 Moran, M O R A N.

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1 **Q. Okay. And when was he a graphic -- during which**
2 **time period was he the graphic designer?**

3 A. You know, he started with our company -- boy.
4 Like 2006. And I'm not sure if he ran all the way up to
5 the time that we hired Casey, but given this is a
6 relatively simplistic graph, someone else on our team
7 could have created it that has digital marketing skills.
8 I just don't know.

9 Externally, we've had commercials or
10 advertisements produced by -- you know, other outside
11 groups.

12 **Q. Who was the graphic designer between 2010 and --**
13 **2012 and 2016?**

14 A. Well, Mike Moran was there for part of it, but I
15 don't think he went all the way to 2016. I just don't
16 recall that. It's not that we couldn't provide that. I
17 presume we can provide that.

18 **Q. Okay. If you could turn to page 10.**

19 A. Of the complaint?

20 **Q. Of MU-14, the complaint, yes.**

21 A. Okay.

22 **Q. My apologies.**

23 A. Not a problem.

24 **Q. The graphic that we've titled here Back Label,**
25 **who designed this bar chart?**

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1 A. I'm not sure when this packaging -- I'm not sure
2 the lot number of this packaging. If I knew the lot
3 number, then I could tell you who did the artwork. If
4 it was -- in general terms, it was likely Mike Moran,
5 but it's not 100 percent because of I'm not sure when
6 this was actually photographed.

7 **Q. And who was in charge of design --**

8 A. I'm sorry.

9 **Q. I'm sorry, let me --**

10 A. I'm sorry, I scrolled inadvertently.

11 **Q. Let me rephrase my question.**

12 A. Sure.

13 **Q. Who at Quincy designed artwork for the Prevagen**
14 **label?**

15 A. Well, at what period of time?

16 **Q. From 2012 to 2016?**

17 A. Well, Mike Moran was part of that time frame.
18 Part of the design was also done by our label
19 manufacturing. And then all of our labeling is reviewed
20 by counsel, so their feedback is always incorporated in
21 the process.

22 **Q. Does Quincy have in-house counsel?**

23 A. No.

24 **Q. Has it ever had in-house counsel?**

25 A. No.

I, Mark Underwood, hereby certify that I have read and examined the transcript of the Federal Rule of Civil Procedure 30(b)(6) deposition of Mark Underwood, which occurred on August 20, 2020, and hereby make the following corrections to the transcript of my deposition:

PAGE	LINE(S)	CORRECTION	REASON
38	21	Replace “allergistic” with “allergenic”	Transcription Error
55	20	Replace “Neutrics” with “Neutricks”	Typo
56	3, 9	Replace “Neutrics” with “Neutricks”	Typo
57	4	Replace “Helina” with “Halina”	Typo
58	8	Replace “Helina” with “Halina”	Typo
59	6, 15	Replace “Helina” with “Halina”	Typo
60	2	Replace “Helina” with “Halina”	Typo
62	16	Replace “Helina” with “Halina”	Typo
63	20	Replace “Helina” with “Halina”	Typo
69	24	Replace “Helina” with “Halina”	Typo

I declare under penalty of perjury that the foregoing is true and correct. Executed at
Madison, Wisconsin on September 21, 2020.

MARK UNDERWOOD